HON'BLE SRI G.S. SINGHVI,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD.

-

W.A. NO. 79 OF 2006.

BETWEEN:

K. Ananda Rao,

S/o Mohan Rao,

R/o H.No.55-5-63, Side Portion of

Venkojipalem,

Visakhapatnam.

…..

APPELLANT.

AND

1. The Andhra Pradesh Housing Board,

Rep. By its Chairman, Gruhakalpa,

M.J. Road, Hyderabad,

and others.

….. RESPONDENTS.

:: JUDGMENT ::

Counsel for the appellant : Mr. K. Bhaskara Rao.

Counsel for the respondents : Mr. J. Prabhakar,

SC for APHB.

30th JANUARY, 2006.

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Per G.S. Singhvi, CJ

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Having failed to persuade the learned Single Judge to nullify the decision taken by the Andhra Pradesh Housing Board (for short 'the Board') to cancel the acceptance of the highest bid given by him for Plot No.12 situated near Zilla Parishad Layout, Srikakulam, the appellant has filed this appeal under Clause 15 of the Letters Patent.

A perusal of the record shows that in the auction held by the Board on 21-5-1995, the appellant gave highest bid of Rs.1,25,720=00. He paid 1/4th of the sale consideration amounted to Rs.31,430=00 and other charges. The bid

given by him was accepted by the competent authority. This was conveyed to him vide order dated 11-9-1995. He paid further sum of Rs.41,000=00 in four installments on 25-4-1996 (Rs.20,000=00),
11-6-1996 (Rs.6,000=00), 25-7-1996 (Rs.10,000=00) and 27-8-1996 (Rs.5,000=00), but failed to pay the balance amount of Rs.53,290=00. Instead, he appeared to have represented to the authorities of the Board that the size of the plot was not 500.88 square yards as indicated in the auction notice and, therefore, the total sale consideration may be reduced. After some correspondence, the Board vide its letter No.E3/Plot No.12/SKL/NZP/EE(H)/V/95, dated 11.07.1997 cancelled the appellant's bid and forfeited the amount already deposited. This was duly conveyed to the appellant, but he did not take any steps to challenge the same before an appropriate judicial forum. After almost 8 years of the cancellation of the bid given by him, the appellant filed W.P.No.27660 of 2005 questioning the notification dated 22.11.2005 issued by the Board for auctioning the disputed plot.

Learned single Judge non-suited the appellant on the ground of delay by observing that the decision taken by the Board in 1997 to cancel the bid given by him cannot be nullified after a long time-gap of 8 years.

Learned counsel for the appellant made strenuous efforts to persuade us to quash the auction notice issued by the Board by asserting that letter dated 11.07.1997 had not been served upon the appellant, and, therefore, the same could not be challenged, but we have not felt persuaded to agree with him. In the affidavit filed by him in support of the writ petition, the appellant did not aver that letter dated 11-7-1997 had not been received by him. Moreover, the documents filed along with the writ petition do not show that the appellant had at any point of time between 11.07.1997 and 25.10.2005 did not make any effort to find out the fate of the bid given by him. After depositing a substantial part of the bid given by him, it would have been natural for the appellant to pursue the matter with the authorities of the Board for the purpose of depositing balance price and securing possession. However, the fact of the matter is that after 1995 the appellant did not approach the concerned authorities of the Board for deposit of the balance price and for transfer of the plot in his name. In our considered view, the appellant's silence for a long

period of 8 years militates against the bona fides of his assertion that letter dated 11.07.1997 had not been received by him and we are in complete agreement with the learned Single Judge that the writ petition filed in the year 2005 for indirect annulment of the decision taken by the Board in the year 1997 to cancel the highest bid given by him was highly belated.

In this context, it is appropriate to observe that even though Article 226 of the Constitution of India does not prescribe the period of limitation within which a petition can be filed for issuance of direction, order or writ in the nature of writ of certiorari, prohibition, quo warranto, habeas corpus and mandamus, in the last 50 years the superior courts have evolved rules of self imposed restraint for exercise of power under Article 226. One of these rules is that the High Court will not entertain belated petitions. In **STATE OF MADHYA PRADESH Vs. BHAILAL BHAI**, the Constitution Bench of the Supreme Court held that even though the Limitation Act does not apply to the proceedings under Article 226 of the Constitution, a petition filed after expiry of the period prescribed for filing civil suit will ordinarily be treated as belated and the petitioner will be non-suited unless the delay is satisfactorily explained. In **TILOKCHAND MOTICHAND Vs. H.B. MUNSHI** another Constitution Bench by a majority decision held that even though there is no lower or upper limit for filing petition under Article 226 of the Constitution, the petitioner must give satisfactory explanation of the delay, if any, in filing of the writ petition. The majority further held that even if a petition is filed within the period of limitation prescribed for filing civil suit, the petitioner can be non-suited if satisfactory explanation for the delay is not given. The Court further held that a petition filed after expiry of the period of limitation prescribed for filing civil suit can also be entertained if the delay is satisfactorily explained. The ratio of the latter decision was approved by the majority of 9 Judges Bench in **MAFATLAL INDUSTRIES LTD., Vs. UNION OF INDIA.**

By applying the ratio of the aforementioned decisions to the facts of the case, we hold that the learned Single Judge did not commit any error by refusing to entertain the prayer of the petitioner for nullification of letter dated 11-7-1997 and notification dated 22-11-2005.

We are further of the view that the appellant's challenge to the decision contained in letter dated 11.07.1997 is liable to be negatived on the short

ground that the copy of the said communication had not been placed on the record of the writ petition. I n **SURINDER SINGH Vs. CENTRAL GOVERNMENT,** the Supreme Court held that the High Court cannot nullify an administrative/executive order or decision of the Government if copy thereof has not been placed on the record of the writ petition.

For the reasons mentioned above, the appeal is dismissed. No costs.

G.S. SINGHVI. CJ

G. BHAVANI PRASAD. J

Dated: 30.01.2006

VRK / svs

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HON'BLE SRI G.S. SINGHVI,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD.

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W.A.NO. 79 OF 2006.

(Order of the Bench delivered by

Hon'ble The Chief Justice)

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Dt: 30-01-2006.